* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 79 of 2007**

Judgment reserved on: July 11, 2007

% Judgment delivered on: July 13, 2007

Dev Features Pvt. Ltd.
14, Babar Road
New Delhi ...Appellant

Through Mr. Krishan Mahajan, Adv.

Versus

Assistant Commissioner of Income Tax
Central Circle-9
New Delhi ...Respondent

Through Mr. R.D. Jolly with
Mr. Vishnu Sharma, Advs.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

MADAN B. LOKUR, J.

The Assessee is aggrieved by an order dated 23rd June, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' in ITA No.1218/Del of 2004 relevant for the assessment year 1992-93.

2. The Assessee is a private limited company engaged in the business of syndication and equipment hiring.

3. The assessment was originally framed under Section 143(1)(a) of the Income Tax Act, 1961 (for short the Act). Subsequently, the Assessing Officer issued a notice under Section 148 of the Act for re-assessment. The Assessee was asked, during the re-assessment proceedings, to prove the genuineness of the claim of Rs.18 lakhs shown as payable to Mr. R.G.N. Swami. The assessee was unable to satisfy the Assessing Officer about the genuineness of the claim. An opportunity was given to place on record a confirmation from Mr. R.G.N. Swami that this amount was due to him but no such confirmation was obtained. Even though the transaction was said to be of Rs.18 lakhs but neither was this amount ever claimed by Mr. R.G.N. Swami for

almost a decade nor was any evidence produced in support of the contention that the amount was payable to Mr. R.G.N. Swami.

4. In appeal, the Commissioner of Income Tax (Appeals) [CIT (A)] took into consideration a memorandum of settlement dated 1st October, 2003 entered into between the Assessee and Mr. R.G.N. Swami in which the Assessee's liability was settled. On this basis, the CIT (A) accepted the contention of the Assessee that the amount was payable to Mr. R.G.N. Swami but a settlement had taken place between the parties and so the addition made by the Assessing Officer was deleted.

5. In further appeal, the Tribunal set aside the order of the CIT (A). It was observed by the Tribunal that the Assessee had not produced any material to show that the amount was to be paid to Mr. R.G.N. Swami. The amount was said to be payable for some video footage acquired from Mr. R.G.N. Swami but no agreement or any document was produced on the basis of which it could be said that the Assessee was obliged to make any payment to Mr. R.G.N. Swami. No material

was produced before the CIT (A) also who merely proceeded on the basis of the memorandum of understanding signed between the Assessee and Mr. R.G.N. Swami.

6. The Assessee is in appeal before us against the decision of the Tribunal. We find no merit in the appeal since on going through the record, it is quite clear that there was absolutely no material on the basis of which it could be said that the Assessee was liable to pay any amount to Mr. R.G.N. Swami. The amount is not a small amount (Rs.18 lakhs) and Mr. R.G.N. Swami does not appear to have made any effort to recover that amount from the Assessee nor is there any material to show that any video footage was received by the Assessee on the basis of any agreement or any understanding entered into between the Assessee and Mr. R.G.N. Swami. All that is available on record is the *ipse dixit* of the Assessee which was not accepted by the Assessing Officer.

7. The memorandum of understanding relied upon by the CIT (A) is on the record before us and we find that it is devoid of any material particulars. The nature of the video footage and "other related

activities" are not particularized; there is no indication as to when this was given to the Assessee or why and how the Assessee disputed the quality and contents of video footage etc.

8. Under the circumstances, we do not find any error having been committed by the Tribunal in taking the view that it did.

9. No substantial question of law arises for consideration. Dismissed.

Madan B. Lokur, J

July 13, 2007 **V.B. Gupta, J**
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Certified that the corrected copy of the judgment has been transmitted in the main Server.